



**DEPARTMENT OF TRANSPORTATION**

**[4910-EX-P]**

**Federal Motor Carrier Safety Administration**

**[Docket No. FMCSA- 2012-0154]**

**Qualification of Drivers; Application for Exemptions; National Association of the Deaf**

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of applications for exemptions; request for comments.

**SUMMARY:** FMCSA announces that the National Association of the Deaf (NAD) has applied for exemptions on behalf of 45 individuals from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). In accordance with the statutory requirements concerning applications for exemptions, FMCSA requests public comments on NAD's request. The statute and implementing regulations concerning exemptions require that exemptions must provide an equivalent or greater level of safety than if they were not granted. If the Agency determines the exemptions would satisfy the statutory requirements and decides to grant the NAD's request after reviewing the public comments submitted in response to this notice, the exemptions would enable these 45 individuals to qualify as drivers of CMVs in interstate commerce without meeting the Federal hearing standard.

**DATES:** Comments must be received on or before [Insert date 30 days after date of publication in the FEDERAL REGISTER].

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA- 2012-0154 using any of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- Mail: Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, S.E., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.
- Hand Delivery: West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, S.E., Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.
- Fax: 1-202-493-2251.

Instructions: Each submission must include the Agency name and the docket numbers for this notice. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to <http://www.regulations.gov> at any time or Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue, S.E., Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the FDMS published in the Federal Register on January 17, 2008 (73 FR 3316), or you may visit

<http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf>.

**FOR FURTHER INFORMATION CONTACT:** Elaine M. Papp, Chief Medical Programs, (202) 366-4001, [fmcsamedical@dot.gov](mailto:fmcsamedical@dot.gov), FMCSA, Department of Transportation, 1200 New Jersey Avenue, S.E., Room W64-224, Washington, DC 20590-0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Federal Motor Carrier Safety Administration has authority to grant exemptions from many of the Federal Motor Carrier Safety Regulations (FMCSRs) under 49 U.S.C. 31315 and 31136(e), as amended by Section 4007 of the Transportation Equity Act for the 21st Century (TEA- 21) (Pub. L. 105-178, June 9, 1998, 112 Stat. 107, 401). FMCSA has published in 49 C.F.R. part 381, subpart C final rules implementing the statutory changes in its exemption procedures made by section 4007, 69 FR 51589 (August 20, 2004).<sup>1</sup> Under the rules in part 381, subpart C, FMCSA must publish a notice of each exemption request in the Federal Register. The Agency must provide the public with an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted and any research reports, technical papers and other publications referenced in the application. The Agency must also provide an opportunity to submit public comment on the applications for exemption.

The Agency reviews the safety analyses and the public comments and determines whether granting the exemption would likely achieve a level of safety equivalent to or

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<sup>1</sup> This action adopted as final rules the interim final rules issued by FMCSA's predecessor in 1998 (63 FR 67600 (Dec. 8, 2008)), and adopted by FMCSA in 2001 (66 FR 49867 (Oct. 1, 2001)).

greater than the level that would be achieved without the exemption. The decision of the Agency must be published in the Federal Register. If the Agency denies the request, it must state the reason for doing so. If the decision is to grant the exemption, the notice must specify the person or class of persons receiving the exemption and the regulatory provision or provisions from which an exemption is granted. The notice must also specify the effective period of the exemption (up to 2 years) and explain the terms and conditions of the exemption. The exemption may be renewed.

The current provisions of the FMCSRs concerning hearing state that a person is physically qualified to drive a CMV if that person

First perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5—1951.

49 CFR 391.41(b)(11). This standard was adopted in 1970, with a revision in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid, 35 FR 6458, 6463 (April 22, 1970) and 36 FR 12857 (July 3, 1971).

FMCSA also issues instructions for completing the medical examination report and includes advisory criteria on the report itself to provide guidance for medical examiners in applying the hearing standard. See 49 C.F.R. 391.43(f). The current advisory criteria for the hearing standard include a reference to a report entitled “Hearing Disorders and Commercial Motor Vehicle Drivers” prepared for the Federal Highway Administration, FMCSA’s predecessor, in 1993.<sup>2</sup>

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<sup>2</sup> This report is available on the FMCSA web site at [http://www.fmcsa.dot.gov/facts-research/research-technology/publications/medreport\\_archives.htm](http://www.fmcsa.dot.gov/facts-research/research-technology/publications/medreport_archives.htm).

## **National Association of the Deaf Application for Exemptions**

On July 28, 2011, the National Association of the Deaf (NAD), wrote FMCSA asking for exemptions for a number of drivers from the hearing requirements in 49 CFR 391.41(b)(11).<sup>3</sup> In support of these applications for exemption, the NAD cited and relied on a study requested by FMCSA and presented to the Agency in 2008. The evidence report was prepared for the purpose of providing information regarding the current state of knowledge on hearing and CMV driver safety.<sup>4</sup> The evidence report reached two conclusions regarding the matter of hearing loss and CMV driver safety: (1) No studies that examined the relationship between hearing loss and crash risk exclusively among CMV drivers were identified; and (2) evidence from studies of the private driver license holder population does not support the contention that individuals with hearing impairment are at an increased risk for a crash. In addition, according to NAD, “The same report also questioned the validity of the DOT’s ‘forced whisper test’ concluding that the ‘forced whisper test’ has a high sensitivity, but low specificity, meaning that some people with normal hearing fail the forced whisper test.”

The NAD maintains that communication in trucking is no longer hampered by hearing loss because drivers increasingly rely on smartphones and other technology to communicate with dispatch. The NAD conducted over 100

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<sup>3</sup> Vargas, Mary C., National Association of the Deaf, to Larry Minor, Associate Administrator, FMCSA, July 28, 2011, “Re: Exemption from 49 C.F.R. § 391.41 (b)(11).” See the docket for this notice. Initially, the request was for exemptions for 21 drivers, and NAD later submitted information for 24 additional drivers requesting exemptions, for a total of 45 included in this notice.

<sup>4</sup> Price, N., Tiller, M, Reston, J., & Tregear, S., “Executive Summary on Hearing, Vestibular Function and Commercial Motor Driving Safety,” presented to FMCSA on August 26, 2008. Retrieved April 27, 2012, from: <http://www.fmcsa.dot.gov/rules-regulations/TOPICS/mep/report/Hearing-Evidence-Report-Final-Executive-Summary-prot.pdf>. See the docket for this notice. The full text of the Evidence Report is available through a link at [http://ntl.bts.gov/lib/30000/30400/30459/Hearing\\_DOT-FMCSA\\_-\\_FINAL\\_8-29-08.pdf](http://ntl.bts.gov/lib/30000/30400/30459/Hearing_DOT-FMCSA_-_FINAL_8-29-08.pdf). The evidence report also reviewed vestibular disorders, which are not included in these exemption applications.

hours of interviews with individuals who are deaf and hard of hearing and reports that deaf drivers face fewer distractions behind the wheel.

### **FMCSA Requests Comments on the Exemption Applications**

FMCSA requests comments from all interested parties on whether a driver who cannot meet the hearing standard should be permitted to operate a CMV in interstate commerce. Further, the Agency asks for comments on whether a driver who cannot meet the hearing standard should be limited to operating only certain types of vehicles in interstate commerce, for example, vehicles without air brakes. The statute and implementing regulations concerning exemptions require that the Agency request public comments on all applications for exemptions. The Agency is also required to make a determination that an exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption before granting any such requests. 49 U.S.C. 31315(b)(1). See also 49 C.F.R. 381.305(a).

### **Individual Applicants for Exemptions**

The NAD has applied for an exemption for each of the 45 individuals listed in this notice from the hearing requirement in 49 CFR 391.41(b)(11), which applies to drivers of CMVs in interstate commerce. The NAD states that each of these drivers has “a proven track record of safe driving” and “can satisfy all of the Physical Qualification Standards, with the exception of the hearing test contained in § 391.41(b)(11).” Accordingly, after receiving public comment on the requests for exemption and the impacts on safety, the Agency will evaluate each application for an exemption to determine whether granting an exemption will achieve the required level of safety mandated by statute.

## **Information on Individual Applicants**

### David W. Bateman.

Mr. Bateman holds a class A commercial drivers license (CDL) from the state of Minnesota. He has driven intrastate for the past 14 years, including driving dump trucks and tractor trailer trucks. He would like to drive tractor trailer trucks in interstate commerce, if he is granted an exemption.

### William B. Britt, Jr.

Mr. Britt holds a class D drivers license from the state of Tennessee. Class D has a for-hire endorsement that allows a person to drive vehicles such as limousines and taxis. He operates his personal vehicle in his job as a repairman. He would like to obtain a CDL and drive passenger buses, if granted an exemption.

### Alan T. Brown

Mr. Brown holds a class B CDL from the state of New Jersey. He currently drives a pick- up truck for a gas company and operates in intrastate commerce. He would like to apply for work as a CMV driver in interstate commerce, if granted an exemption.

### David W. Brown

Mr. Brown holds a class A CDL from the state of Maine but is limited to intrastate operations. He has driven trucks since 1983 in intrastate commerce and has operated a number of different types of trucks, including vehicles with airbrakes. He would like to operate a CMV in interstate commerce, if granted an exemption.

### Ernest W. Brown

Mr. Brown holds a class D driver's license from the state of Kentucky. He would like to obtain a CDL and drive CMVs greater than 26,001 pounds in interstate commerce,

if granted an exemption.

Cody J. Campbell

Mr. Campbell holds a class D driver's license from Louisiana. He currently is a "light duty driver," driving a tractor. He would like to obtain a CDL and drive heavy equipment such as a dump truck, or rig truck with a trailer, if granted an exemption.

Tyjuan M. Davis

Mr. Davis holds a class D driver's license from the state of Florida. His family is in the trucking business and he would like to obtain a class A CDL and drive tractor trailers in interstate commerce, if granted an exemption.

Randall R. Doane

Mr. Doane holds a class AM CDL from the state of Texas. He has logged over 250,000 miles driving trucks in interstate commerce prior to failing his hearing test recently. He has experience driving double/triple trailers, tankers and hazardous material transport. He is currently permitted to drive a CMV in intrastate commerce. He would like to return to driving CMVs in interstate commerce, if granted an exemption.

Allen W. Estes

Mr. Estes holds a class B CDL from the state of Louisiana. He has driven a bus transporting students to and from school since 1990. He would like to obtain a CDL so that he can transport students to events outside of Louisiana, if granted an exemption.

Leslie A. Fairbanks

Mr. Fairbanks held a class A CDL driver's license from the state of Minnesota from 2001 until 2010, when he failed his hearing test. During that time he drove a variety of tractor trailer trucks in interstate commerce. He would like to obtain a CDL and return



to driving tractor trailer trucks, if he is granted an exemption.

Edward T. Geariety

Mr. Geariety held a class A CDL from the state of Minnesota from 1996 until 2011, when he failed his hearing test. During that time he drove large trucks carrying stone from a quarry to customers. He would like to return to driving CMVs in interstate commerce, if granted an exemption.

Donald W. Gordon

Mr. Gordon holds a class CM driver's license from the state of Pennsylvania. . He operates a mini-van as an independent contractor picking up and delivering materials. He would like to obtain a CDL and drive CMVs for a national carrier, if granted an exemption.

William Edward Haab

Mr. Haab holds a class D driver's license from the state of Louisiana. He is interested in obtaining a CDL and pursuing a career in commercial trucking, if granted an exemption.

Charles L. Harper

Mr. Harper holds a driver's license from the state of Washington. He has driven rental vehicles and a 12-seat van for a group home. He would like to obtain a CDL and have the opportunity to drive CMVs in interstate commerce, if granted an exemption.

Cornelio Hernandez

Mr. Hernandez holds a driver's license from the state of California. He has enrolled in a driving course for a class B CDL, but was unable to complete it as he did not pass the hearing test. He would like to obtain a class A or B CDL to pursue work

driving CMVs in interstate commercial driver, if granted an exemption.

David Hoffman

Mr. Hoffman has experience operating commercial motor vehicles in intrastate commerce. This includes experience driving heavy equipment, dump trucks and public works trucks with trailers while living in the state of Tennessee. He relocated to South Dakota, but is unable to obtain a class A CDL because he could not pass the hearing test. He would like to obtain a CDL to drive trucks in interstate commerce, if granted an exemption.

Alvin L. Johnson

Mr. Johnson holds a class CM driver's license from the state of Georgia. He would like to attend driving school to obtain a CDL and drive CMVs in interstate commerce, if granted an exemption.

Jerry D. Jones

Mr. Jones holds a class C CDL from the state of Texas. He has 7 years experience driving a variety of forklifts for a construction company. He would like to pursue opportunities driving CMVs in interstate commerce, if granted an exemption.

James E. Karr

Mr. Karr holds a class DM driver's license from the state of Kentucky. He would like to obtain a CDL and seek employment opportunities driving CMVs in interstate commerce, if granted an exemption.

Lorin W. King

Mr. King holds a class D driver's license from the state of Oklahoma. The class D license permits one to drive regular automobiles and trucks. He has experience driving

single trailer vehicles with airbrakes. He would like to obtain a CDL and seek employment opportunities driving CMVs in interstate commerce, if granted an exemption.

Christopher Kuller

Mr. Kuller holds a class M driver's license from the state of Indiana. In the past, he held a CDL and hazmat license, and drove in interstate commerce for 14 years, until he was unable to pass the DOT hearing test. He would like to obtain a CDL and return to driving CMVs in interstate commerce, if granted an exemption.

Julio Cesar Medrano

Mr. Medrano holds a driver's license from the state of Washington. He is currently a student majoring in diesel technology, graduating in May 2012. Most job descriptions for diesel engine technicians include a requirement that he hold a CDL, due to the need to pick up and drive trucks back to the shop for repair. He would like to obtain a CDL and drive CMVs in interstate commerce, if granted an exemption.

Hal A. Miller

Mr. Miller holds a class C driver's license from the state of Iowa. A class C allows the operation of vehicles under 26,000 pounds. He has experience operating a Ryder rental truck and personal farm tractors. He would like to obtain a CDL and drive CMVs in interstate commerce, if granted an exemption.

Kathy K. Miller

Ms. Miller holds a class C driver's license from the state of Iowa. She has experience driving students to and from local activities. She is limited at work due to her not being able to pass the hearing test and obtain a DOT medical card. She would like to

obtain a CDL and drive CMVs in interstate commerce, if granted an exemption. She is interested in career opportunities with package delivery companies.

Brian J. Minch

Mr. Minch holds a driver's license from the state of New Hampshire. He currently drives super duty pick-up trucks for landscape and construction companies. He would like to obtain a CDL and drive CMVs in interstate commerce, if granted an exemption.

Larry J. Moss

Mr. Moss holds a driver's license from the state of California. He currently works for a delivery and hauling service, driving trucks and often pulling a trailer. He would like to attend trucking school, obtain a CDL and drive CMVs in interstate commerce, if granted an exemption.

Leslie R. O'Rorke

Mr. O'Rorke holds a class D driver's license from the state of Illinois. He has experience driving super duty pick-up trucks with a trailer and dump trucks for a tree service company. He would like to obtain a CDL and drive CMVs in interstate commerce, if granted an exemption.

Timothy A. Parker

Mr. Parker holds a class C driver's license from the state of California. The class C license in California allows one to operate a traditional two-axle vehicle. He has experience operating 18-wheel trucks as well as forklifts. He would like to obtain a CDL so he can drive the tractor trailer trucks in interstate commerce, if granted an exemption.

Gregory M. Potter

Mr. Potter holds a class C driver's license from the state of Texas. He has experience driving a company van and rental trucks towing a trailer. He would like to obtain a class A CDL to drive tanker trucks in interstate commerce, if granted an exemption.

Gerson P. Rameriez

Mr. Rameriez holds a class D driver's license from the state of Montana. He has experience driving a dump truck towing a trailer. He also drove a truck for five years while working as a painter. He would like to obtain a class A CDL and attend a trucking school in Montana, if granted an exemption.

Jeremy Reams

Mr. Reams holds a class D driver's license from the state of Kentucky. The class D is valid for any single motor vehicle, and a trailer with weights not greater than 26,000 pounds. He has experience driving 24-foot moving trucks, fifth wheel vehicles and has hauled ATV's for personal use. He would like to obtain a CDL to drive CMVs in interstate commerce, if granted an exemption.

Noel A. Rodriguez

Mr. Rodriguez holds a driver's license from the state of Connecticut. He has experience towing rental trailers and as a delivery driver for a dental lab. He would like to obtain a class A or B CDL and drive tractor trailer combination vehicles in interstate commerce, if granted an exemption.

Robert R. Rotondi

Mr. Rotondi holds a driver's license from the state of South Carolina. He has

experience driving rental trucks and forklifts. He currently owns a 12-foot trailer he uses to tow his motorcycle. He would like to obtain a class A or B CDL and drive CMVs in interstate commerce, if granted an exemption.

Daniel Schoultz

Mr. Schoultz holds a class C driver's license from the state of Pennsylvania. He has 25 years experience driving trucks, but he is currently not able to pass the DOT hearing test. He would like to obtain a CDL again and drive CMVs in interstate commerce, if granted an exemption.

Stanley W. Shields

Mr. Shields holds a class D driver's license from the state of Kentucky. He would like to obtain a CDL and to seek employment opportunities as a CMV driver, if granted an exemption.

James M. Skinner

Mr. Skinner holds a driver's license from the state of Florida that allows him to drive any non-commercial vehicle less than 26,001 pounds. He has experience driving rental trucks and towing rental trailers. He would like to obtain a class A CDL and drive an interstate tractor trailer weighing over 26,001 pounds with airbrakes, if granted an exemption.

Ronald J. Taylor

Mr. Taylor holds a class C driver's license from the state of Texas. He is currently a student, but would like to seek opportunities in driving. He would like to obtain a CDL to drive CMVs in interstate commerce, if granted an exemption.

Morris W. Townsend

Mr. Townsend holds a class A CDL from the state of North Carolina, allowing him to drive CMV's in intrastate commerce. He has owned a towing company for nine years and has experience driving a roll back truck with which he can carry two cars. He would like to be able to expand his business. He would like to obtain a CDL allowing him to drive CMVs in interstate commerce, if granted an exemption.

Justin J. Trethewey

Mr. Trethewey holds a class C chauffeur license from the state of Michigan. He is starting his own transit business after working as a chauffeur. He would like to obtain a CDL and tow a gooseneck trailer to transport cars, recreational vehicles or small trailers, if granted an exemption.

Gilbert J. Valdez

Mr. Valdez holds a driver's license from the state of Rhode Island. He currently works part-time and would like to obtain a CDL to seek employment opportunities driving CMVs in interstate commerce, if granted an exemption.

Mark L. Valimont

Mr. Valimont holds a class C driver's license from the state of Texas. He is currently a package handler. He has 13 years experience driving dump trucks and three years experience driving a tractor. He would like to obtain a CDL and drive CMVs in interstate commerce, if granted an exemption.

Billy J. Warnock

Mr. Warnock holds a class M driver's license from the state of Indiana. He has 14 years experience driving CMV's in interstate commerce and has logged more than three million miles crossing 48 states. He recently was unable to pass the DOT hearing test and

is no longer able to operate CMV's in interstate commerce. He would like to return to driving CMVs and possibly start his own business, if granted an exemption.

Kevin C. Willis

Mr. Willis holds a class C driver's license from the state of California. He has held a FAA Private Pilot Certificate since 2006 and flies private planes that weigh up to 12,500 pounds. He would like to obtain a CDL and pursue employment opportunities in the commercial transportation business, if granted an exemption.

James R. Wilson

Mr. Wilson holds a class C driver's license from the state of Georgia. He has experience driving forklifts and a super duty pickup truck for a private employer. He would like to obtain a CDL and drive CMV's in interstate commerce, if granted an exemption.

Holly Cameron Wright, Jr.

Mr. Wright holds a class C driver's license from the state of North Carolina. He has experience driving forklifts and commercial vehicles at his family-owned business site. He would like to obtain a CDL and drive CMVs in interstate commerce, if granted an exemption.

**Request for Comments**

In accordance with 49 U.S.C. 31136(e) and 31315(b)(4), FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. The Agency will consider all comments received before the close of business **[Insert date 30 days after date of publication in the FEDERAL REGISTER]**. Comments will be available for examination in the docket at the location listed under the **ADDRESSES**



section of this notice. The Agency will file comments received after the comment closing date in the public docket, and will consider them to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should monitor the public docket for new material.

Issued on: May 16, 2012

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Anne S. Ferro  
Administrator

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